

Reply to:

25 INDEPENDENCE BOULEVARD
WARREN, NEW JERSEY 07059-6747
(908) 647-1022
(908) 647-7721 FAX
www.heroldlaw.com

488 Madison Avenue, Suite 1120
NEW YORK, NEW YORK 10022
(646) 227-0180
BY APPOINTMENT ONLY

HEROLD LAW

PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

70 NE 5th AVE
DELRAY BEACH, FLORIDA 33483
(561) 501-6073
FAX: (561) 501-6069

150 N. RADNOR-CHESTER ROAD, SUITE F-200
RADNOR, PENNSYLVANIA 19087
OFFICE: (610) 977-2023
CELL: (215) 680-1860

Email: rsimon@heroldlaw.com
Extension: 113

March 10, 2025

Via E-mail (jvite@westorange.org)

Jamilet Baquerizo Vite, Secretary
West Orange Township Planning Board
66 Main Street
West Orange, NJ 07052

Re: Applicant: The WayMaker, LLC
Property: 40 Eagle Ridge Way, Block 106, Lot 20.03
Township of West Orange
Scheduled Hearing Date: March 12, 2025

Dear Ms. Vite:

As you are aware, this office represents Llewellyn Park ("Client") with regard to the above-referenced matter (the "Application"), which we understand is scheduled to continue before the West Orange Township Planning Board (the "Board") on March 12, 2025. At the prior hearing on this Application, the Board Chairman invited our Client to provide in writing a summary of testimony intended to be provided by our engineering expert, Eric Keller, as to the Application. While much of the following is anticipated to be addressed by Mr. Keller in his testimony, we also use this opportunity to bring to the Board's attention the many procedural and substantive deficiencies with the Application.

Our Client continues to participate before the Board as to the Application due to serious stormwater runoff impacts from the Property that continue to adversely impact our Client's properties and many of its 170 taxpaying residents. The Applicant, prior to submitting its Application, engaged in improper development activities on its Property, such as the improper disturbance of steep slopes, the improper relocation of a New Jersey Department of Environmental Protection ("NJDEP") regulated drainage ditch, and the improper installation of a drainage pipe (including entering upon our Client's property without consent), each without first securing the necessary permits from the Township or relief from the Board and/or other regulatory agencies with jurisdiction over such activities, such as the NJDEP, have contributed to cause extensive stormwater damage to our Client's properties.

The Application currently before the Board is for Major Site Plan approval under the Township's Stormwater Management regulations, due to the approximately 1.88 acres of the Property being disturbed to accommodate the construction of a pool building, inground pool,

drainage facilities, and retaining walls in the rear of the Property. As submitted, the Application remains incomplete and cannot be properly assessed by the Board. Under Ordinance § 25-29.4, stormwater management measures shall be designed to consider the existing site conditions (in other words, the “base” conditions PRIOR to the pool and pool house construction and the bedrock excavations and clearing of vegetation to construct the retaining wall) including the identification of steep slope areas and related disturbance. The Applicant’s current plan from Colliers does not reflect the “proposed development” as it excludes work performed by the Applicant’s contractor before any stop work order was issued. The Board must consider the site conditions prior to commencement of the unpermitted construction work and all the changes previously made or proposed to be made to the Property by the Applicant since the beginning of the unpermitted/unauthorized construction – and not just those depicted in Colliers’ current plans. Put another way, the Application is to be reviewed by the Board as if the Applicant is first asking for permission to disturb almost two acres of land to construct these improvements (as if the disturbance has not yet occurred) – and not for forgiveness “after the fact”.

In addition, the State’s stormwater regulations and the municipal stormwater ordinance each define “major development” as:

An individual "development," as well as multiple developments that individually or collectively result in:

- a. The disturbance of one or more acres of land since February 2, 2004;
- b. The creation of one-quarter acre or more of "regulated impervious surface" since February 2, 2004;
- c. The creation of one-quarter acre or more of "regulated motor vehicle surface" since March 2, 2021; or
- d. A combination of paragraphs b and c above that totals an area of one-quarter acre or more. The same surface shall not be counted twice when determining if the combination area equals one-quarter acre or more.

Major development includes all developments that are part of a common plan of development or sale (for example, phased residential development) that collectively or individually meet any one or more of paragraphs 1, 2, 3, or 4 above.

The existing home and associated improvements were constructed after 2004 and therefore, are to be included in the assessment of stormwater. The stormwater report that has been submitted does not address these conditions and is therefore not compliant with the regulations.

The Board has to date considered only the Applicant’s proposed future stormwater management system work while ignoring the prior relevant and material changes made and the related Ordinance violations, including but not limited to those that led to the issuance in 2024 of

stop or termination orders for work performed at the Property. The Applicant's plans must be amended by its engineer to depict the full scope of soil and terrain disturbance performed or proposed, including the relocation, shortening, and changing the slope of the drainage channel on the western portion of the Property and installing a 36" elliptical pipe after illegally disturbing steep slopes. Any other approach would allow an owner-applicant to: (1) conveniently limit the scope of a development application to only a portion of the Property while the remaining portions of the Property continue to be in violation of the Ordinance and State regulations, with resulting damage; and (2) begin work without compliance with the Ordinance and State regulations and then argue, after a stop work order is issued, that the Board can only consider future work.

The drainage channel and elliptical pipe stormwater discharge system (the "Channel-Elliptical Pipe System") is a critical element of the stormwater management system on the Property. The Applicant's engineer, Jesse Cokeley, testified that the proposed drainage plan he prepared was complete, covered all stormwater drainage from the site, and included modifications of the Channel-Elliptical Pipe System to include an outlet control system; that some of the water entering such Channel-Elliptical Pipe System comes from Applicant's Property; and that the proposed drainage plan provides **no** reduction of stormwater discharged from the Channel-Elliptical Pipe System through the elliptical pipe directly into Llewellyn Park. Mr. Cokeley stated in his July 19, 2024 memorandum to the Township that "immediate or emergency concerns pertain to the newly installed 36" elliptical RCP storm at the outfall of the existing drainage channel which we understand has been the source of concerns by the Township and the adjoining neighbors."

For the Board to properly engage in its review responsibilities under the Ordinance and applicable law, it must consider the survey and site plan documents created both prior and subsequent to the illegal construction activities at the Property (and provided by the Applicant as part of the Application) - namely, the Roberts Survey from February 2021 (the "2021 Roberts Survey"), the Roberts Slope Analysis Plan from April 2021 (the "2021 Roberts Slope Analysis"), the Pool Artist Site and Grading Plan from April 2021 (the "2021 Pool Artist Plan"), the Matarazzo Grading Plan from December 2022 (the "2022 Matarazzo Plan"), the Osterkorn Survey from May of 2024 (the "2024 Osterkorn Survey") and the Colliers Site Plan from 2024 (the "2024 Colliers Site Plan").

A comprehensive review of these plans/surveys (most of which were never reviewed by the Applicant's current engineer per his sworn testimony) reveals the following:

1. The 2021 Roberts Survey identifies "top of bank" in two locations (meaning the upper limit of the bank of a regulated water, typically characterized by an observable change or break in the slope of the land, and indicative of a NJDEP regulated riparian zone encumbering the Property);
2. The 2021 Roberts Slope Analysis depicts the proposed pool, pool house, drywell system, and EXISTING categories of steep slopes – but fails to identify any proposed

grading in the rear of the Property or associated slope disturbance, including at the rear of the Property;

3. The 2021 Roberts Survey and the 2021 Roberts Slope Analysis depict a drainage ditch at the western end of the Property meandering just past the four-bay garage onto Lot 24.01 (owned by an LLC formed by the principal of the Applicant);
4. The 2021 Pool Artist Plan depicts a proposed drywell detention system in the center of the Property (not in the rear as constructed) and a limit of disturbance ending immediately south of the proposed pool and pool house – with no grading or disturbance, or associated slope disturbance, depicted at the rear/southern end of the Property in the location of the current drywell system and retaining wall;
5. The 2022 Matarazzo Plan depicts a layout, improvements and stormwater system that differs from the 2021 Pool Artist Plan; identifies the aforementioned drainage ditch meandering across Lot 24.01 before traveling through Lot 11 (owned by Llewellyn Park) to the Applicant's Property; identifies a 24" pipe in a north-south direction; contemplates an outflow from the drywell system to the South of the Property; and no identification of the extent of the required steep slope disturbance at the rear of the Property to the Southern property line;
6. The 2024 Osterkorn Survey (which was relied on for the 2024 Colliers Site Plan) and the Colliers 2024 Site Plan depict the drainage ditch in a different location as compared to the 2021 Roberts Survey, the 2021 Pool Artist Plan, and the 2022 Matarazzo Plan; fails to depict "top of banks", the drainage ditch meandering across Lot 24.01, the 24" pipe to the South of the Property, or any Outlet Structure from the drywell system to the South of the Property; and contemplates disturbance at the rear of the Property to the Southern property line without showing the extent of any disturbance of steep slopes;
7. The 2024 Osterkorn Survey also shows the discharge point of the channel to have been altered to enter a newly installed 36" pipe that diverts the discharge from Lots 20.03 and 24.01 to a steeply sloped area just beyond east boundary of Lot 20.03 into the west side of Block 104, Lot 10.31 within the Llewellyn Park community. This 36" pipe is approximately 70 feet long with a current slope greater than eight percent but located in an area with a prior slope exceeding 25%.
8. The 2024 Colliers Site Plan does not show any construction or design details for the proposed retaining walls or that they will be located with the 25% and 20% steepest slopes. The boulder wall on the 2024 Colliers Site Plan is also within the 25% steepest slopes.

In summary, this analysis reveals that: (1) the drainage ditch was improperly relocated (and/or partially filled in) and reduced in length (straightened) from Eagle Ridge Way with its slope increased, resulting in the velocity of stormwater in the channel being increased so as to adversely impact Llewellyn Park; (2) the drainage ditch watercourse constitutes a regulated water feature under the Riparian Zone portion of the State regulations (based on the physical character of the watercourse as depicted in photographs and the 2021 Roberts Survey depicting “Banks”) and that its relocation was in violation of State regulations; (3) the clearing of vegetation within the Riparian Zone had disturbed the entire Riparian Zone and was also a violation of State regulations; (4) the Applicant failed to identify to the Township or the Board the nature and extent of steep slope disturbance at the Property, some of which to illegally install the 36” pipe (partially on property owned by Llewellyn Park – and within a slope area exceeding 25%) that improperly shoots a stream of water into Llewellyn Park; and (5) the Applicant failed to identify that variance relief was required of the Applicant due to the steep slope disturbance at the Property that contributes to erosion and adverse stormwater impacts to Llewellyn Park.

The straightening of the stream and the installation of the pipe dramatically changed the stormwater discharge into Llewellyn Park. The location, slope, length, and conditions of the drainage channel and its discharge point were altered in violation of the Ordinance, State law, and to the detriment of Llewellyn Park. These legal violations, jointly and severally, constitute violations of the Township’s stormwater and steep slope regulations as well as State regulations under N.J.A.C. 7:8 and N.J.A.C. 7:13.

It appears that approximately 25,000 SF of the Applicant’s 90,000 SF Property, or almost 30% of the entire lot, was comprised of steep slopes greater than 10%. The Applicant has disturbed steep slopes well beyond the maximum permitted disturbed area as set forth in the Township’s steep slope ordinance, yet no steep slope disturbance calculations were provided by the Applicant to the Board. Even the area of the drainage ditch at the rear of the Property was mostly within an area of 25% or greater slope which was illegally disturbed by the Applicant. The non-permitted disturbance within steep slope areas was never calculated or identified on the 2021 Roberts Survey, the 2021 Roberts Slope Analysis, the 2021 Pool Artist Plan, the 2022 Matarazzo Plan, the 2024 Osterkorn Survey, or the 2024 Colliers Site Plan. This critical omission violates the Ordinance and applicable law and prevents the Board from assessing related stormwater impacts as specifically contemplated by both the Township’s Stormwater and Steep Slope Ordinances.

This illegal slope disturbance and relocation of the drainage ditch is contributing to the adverse stormwater conditions presently experienced by Llewellyn Park and its residents. The Applicant has a legal obligation to prevent harm to Llewellyn Park and not allow stormwater runoff from its Property to be directed onto any neighboring property. Chapter 25-2.1(o) of the Township’s Land Use Regulations Ordinance (the “Ordinance”) identifies one of its purposes the protection of residential areas, and in particular, Llewellyn Park: “o. To protect, conserve and preserve the unique character and history of the Township's residential areas. **Particular attention is drawn to the area known as the Llewellyn Park, America's first planned residential community** and the Prospect Ridge area with its scenic beauty and natural wooded geological

resources.” *Id.* (emphasis added). Further, Chapter 25-8.16 of the Ordinance requires that the Applicant maintain its “**storm drainage system so that runoff is not directed onto any neighboring properties.**” *Id.* (emphasis added). Landowners in West Orange may not freely dispose of surface water onto neighboring properties.

The provisions of the Township’s Stormwater and Steep Slope Ordinances further substantiate the Applicant’s violative activities concerning stormwater runoff. Ordinance § 25-29.9 requires the Applicant’s Site Development Stormwater Plan to include: steep slopes and erodible soils information; an environmental site analysis describing a discussion of slopes; total areas to be disturbed; details of all stormwater management facility designs; and the proposed plan to control and dispose of stormwater. Ordinance § 25-28.1 provides that: “Disturbances of steep slopes results in accelerated erosion processes from stormwater runoff and the subsequent sedimentation of water bodies with the associated degradation of water quality and loss of aquatic life support. Related effects include soil loss, changes in natural topography and drainage patterns, increased flooding potential, further fragmentation of forest and habitat areas, and compromised aesthetic values. It has become widely recognized that disturbance of steep slopes should be restricted or prevented based on the impact disturbance of steep slopes can have on water quality and quantity, and the environmental integrity of landscapes.” *Id.* As indicated, the disturbance of steep slopes – and any variance relief required incident to such disturbance – needs to be identified by the Applicant and addressed by the Board as part of any Major Site Plan approval under the Township’s Stormwater Management regulations.

For all site plans, an applicant is required to provide the Board with a map showing proposed improvements overlain on a colored topographic map to ascertain the extent of steep slope disturbance for a given property. Ordinance § 25-28.7(b) provides that for areas at the top of a steep slope or adjacent to a parcel with steep slopes, a minimum setback of 50 feet is required from the top of slope to any proposed improvements such as buildings, ... swimming pools, ... or other uses at or near the top of steep slopes, except as otherwise recommended by a qualified professional. Where development is near steep slopes greater than 30%, the setback shall be increased to a minimum of 100 feet, except as otherwise recommended by a qualified professional. The minimum setback shall be established considering site-specific topographic conditions and the recommendations of the qualified professional geotechnical engineer performing the slope stability analysis.” *Id.* Further, Ordinance § 25-28.8(a) provides that “No soil or vegetation shall be disturbed or structures constructed within 100 feet of the ridge line [defined as “the top of the First and Second Watchung Mountains as determined by an analysis of topographic maps”]”. The rear of the Property is at the top of the First Watchung Mountain. Clearly, the Applicant has disturbed its Property, and has proposed development, within areas where it is prohibited without variance relief that has never been applied for or obtained by the Applicant.

It is not only the Applicant’s failure to notify the Board of its illegal slope disturbance and relocation of the drainage ditch that restricts the Board from comprehensively assessing the Applicant’s entitlement to Major Site Plan approval under the Township’s Stormwater Management regulations (and the extent to which variance relief is required under the Township’s

Steep Slope Ordinance). The Applicant's failure to provide the Board with stormwater runoff information as to 42 Eagle Ridge Way, Block 106, Lot 24.01 (with the owner's principal – Mr. Cohn – the same as the Applicant's principal) prevents the Board from making an informed determination as to the Application. For starters, Ordinance § 25-29.9 requires the Applicant's Site Development Stormwater Plan to include a topographic base map of the site extending a minimum of 200 feet beyond the limits of the proposed development, which would include a depiction of 42 Eagle Ridge Way's drainage ditches and associated topography (already mapped by Colliers as part of a Stormwater Management Report it prepared in connection with a development application for the 42 Eagle Ridge Way property currently pending before the Township's Board of Adjustment – depicting drainage patterns from 42 Eagle Ridge Way that intersect with, and impact, the drainage structures at the 40 Eagle Ridge Way Property).

In fact, on July 9, 2024, the Colliers engineer for the Applicant, Justin Ferrazzano, communicated to the Township that “we do need to prepare a comprehensive major site plan with a stormwater management report encompassing both properties [40 Eagle Ridge Way and 42 Eagle Ridge Way], as well as prepare a submission to the Planning Board. As discussed, by planning for both properties we can transfer some obligations of 40 ERW [Eagle Ridge Way] to 42 ERW [Eagle Ridge Way] to better serve the Township and the owners. To prepare a full plan set and stormwater design, then proceed through planning approval will take several months...” Ten days later, on July 19, 2024 the West Orange Director of Planning and Development/Zoning Official notified Mr. Ferrazzano and the Applicant's principal that “no construction, remediation or any other improvements on the site will be permitted. Your intent should be to submit a complete application to the land use board. This should include your plans and reports so that the board professionals can review in totality (40 Eagle Ridge Way and 42 Eagle Ridge Way).”

Despite the Colliers engineer representing to the Township that Colliers would study the stormwater impacts collectively from both properties, the Applicant has improperly failed to submit to the Board any stormwater “plans and reports” for 42 Eagle Ridge Way. This is especially concerning since 40 Eagle Ridge Way and 42 Eagle Ridge Way share the same drainage pattern into Llewellyn Park (the drainage maps submitted by the owner of 42 Eagle Ridge Way to the Township's Board of Adjustment depict a drainage path that culminates at the 36” pipe location on the Applicant's Property). Disturbance activities on both 40 Eagle Ridge Way and 42 Eagle Ridge Way have altered the location of the drainage ditch that traverses near the boundary between the two properties. The 42 Eagle Ridge Way property contributes runoff to the 40 Eagle Ridge Way Property's Stormwater Report's points of study but is not included in the calculations. The Property's Stormwater Report also does not include any contributing offsite subareas in its pre- and post-development calculations, nor does it consider the clear cutting of many trees and the removal of vegetation on the 42 Eagle Ridge Way property that has contributed to the increased water flows into Llewellyn Park.

Further, the stormwater plan for the water coming in part from the Crystal Lake Association property onto the Applicant's property is limited and incomplete, with the only protective elements being the proposed removal of the damaging elliptical pipe the Applicant's contractor installed

(after also changing the slope, length, and conditions of the drainage channel) and the proposed installation of an Outlet Control Structure that will not reduce the volume or spread of the harmful outflow into Llewellyn Park. It appears that the Applicant's plans and demolition or construction work may have interfered with the Planning Board's prior directive via Resolution Condition (PB 98-11) that Crystal Lake (as successor to Highview at West Orange LLC) "provide protection for runoff or drainage into Llewellyn Park". This Resolution condition does not insulate the Applicant from complying with the Ordinance, including its Stormwater Management and Steep Slope Ordinances.

It is also disturbing that the Applicant's recently submitted geotechnical report (as appropriately requested by the Board) identifies shallow bedrock encumbering the proposed stormwater detention area, but there was no testing as to the permeability of the rock (i.e. basin flood tests). Since the Applicant had cleared woods and other areas that cannot be categorized as "previously developed" under the State's stormwater rules, it is required to provide groundwater recharge if possible. Unfortunately, it is unclear whether groundwater recharge is possible since the Applicant failed to undertake a thorough soil and bedrock permeability investigation. Further, the Applicant's stormwater design remains deficient under State regulations for failure to analyze the Property's stormwater conditions as of 2004 (when the State's stormwater regulations went into effect), when the current house and garage at the Property did not even exist at that time.

For all the reasons set forth above, the Application remains deficient, incomplete and incapable of being comprehensively reviewed (let alone be approved) by this Board until the Applicant provides the further information noted above and applies to the Board for all required land development permits and approvals, including steep slope variance relief. Accordingly, the scheduled March 12, 2025 hearing on the Application must be postponed.

We understand the engineers for the Applicant, the Board, the Township, Llewellyn Park, and the Crystal Lake Association met last week to discuss the Application and to evaluate the current site conditions and prior site alterations. We believe that certain remedial action and stormwater management design revisions were suggested at the meeting as required to avoid or minimize further environmental damage and harm to Llewellyn Park and the adjacent property owners, and to comply with the Ordinance (including its Storm Water Management Regulations and Steep Slope Regulations) and applicable NJDEP regulations. Adjourning the March 12, 2025 hearing on the Application will also presumably provide all stakeholders (the Applicant, Board, Township, Llewellyn Park, Crystal Lake Association, and neighboring property owners including the owner of 42 Eagle Ridge Way) the time and opportunity to evaluate the issues and proposals raised in that meeting and in this correspondence so to hopefully achieve a comprehensive resolution acceptable to all stakeholders.

Should the Board consider approving the Application (as amended) once the Applicant provides all of the necessary information and formally requests all required relief, any such approval would need to be conditioned upon the Applicant complying with its legal obligations to: (1) obtain all required NJDEP and Township approvals to restore the drainage ditch watercourse

to its original alignment; (2) obtain all required NJDEP and Township approvals to restore the Riparian Zone to its original condition; (3) remove the 36" pipe and restore the installation area to its condition prior to disturbance; and (4) having the proposed stormwater system on 40 Eagle Ridge Way discharge to the watercourse further upstream and not at the top of the steep slope.

This letter does not constitute, and shall not limit, the extent of the subject matter of Mr. Keller's anticipated testimony before the Board, nor the extent of our Client's objections concerning the Application. It is not to be deemed a waiver of our Client's rights and remedies, all of which are hereby reserved. We reserve the right to supplement and amend same at any time, either verbally or in writing. Kindly place this correspondence in the Board's file and forward an electronic copy of this correspondence to all Board members and professionals as soon as possible. As indicated below, we have sent a copy of this submission to the Board's and the Applicant's counsel, *via* email, and respectfully request that all future documents, letters, emails, reports and submissions of the Applicant or the Board be sent to us at the time transmitted/sent (if necessary, we will pay for the reasonable costs of duplication of all such submissions).

We trust that the above will be helpful to the Board and its professionals in assessing the Application and thank the Board for its consideration.

Very truly yours,



Robert F. Simon

RFS:kas

cc: Llewellyn Park (via e-mail)
Priscilla J. Triolo, Esq. (via-mail ptriolo@bittigerelias.com)
Diana Powell McGovern, Esq. (via e-mail dmcgovern@gpmlegal.com)
Eric Keller, P.E. (via e-mail ekeller@bowman.com)
Zayibeth Carballo, P.E., Township Director of Engineering
(via e-mail zcarballo@westorange.org)
Phil Scott, P.E., Planning Board Engineer (via e-mail pscott@mnwe.com)